IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

Crl.Rev.Pet.No. 1297 of 2006()

CRA.50/2004 of ADDL.SESSIONS COURT (ADHOC)III, MANJERI
CC.140/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II(FOREST OFFENCES), MANJERI

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REVN. PETITIONER: APPELLANT/ACCUSED

M.C.SAHADEVAN, S/O.KESAVAN NAIR,
PUTHIYODATH SOPANAM,
AMBALAPPADI, MAKKARAPARAMBA.P.O.

BY ADV. SRI.SIBY MATHEW
SRI.PHILIP J.VETTICKATTU

RESPONDENTS: COMPLAINANT AND STATE

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1. E.P.SETHUMADHAVAN, S/O.VELAYUDHAN,
EDALAPARAMBIL HOUSE,
POOKOTTUR.P.O.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.K.M.SATHYANATHA MENON
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 1297 OF 2006 B

Dated this the 18th day of June, 2007

O R D E R

In this revision filed under section 397 read with section 401 Cr.P.C., the petitioner who was the accused in C.C.No.140/2003 on the file of JFCM-II, Manjeri for an offence punishable under section 138 of the Negotiable Instruments Act, 1881, challenges the conviction entered and the sentence passed against him for the said offence. The courts below have concurrently found the appellant guilty of the offence and have sentenced him to simple imprisonment for one year and to pay a sum of Rs.2 lakhs by way of compensation to the complainant under section 357 Cr.P.C.

2. I heard the learned counsel for the petitioner and the learned counsel for the respondent/complainant.

3. The learned counsel appearing for the revision petitioner made the following submissions before me in support of the revision:-

The specific case of the complainant is that the sum of Rs.2 lakhs was borrowed by the revision petitioner/accused in August,

2001 for securing appointment for his son to the post of a teacher in a private management school and that the accused had executed an agreement undertaking to pay the amount within ten months. His further case is that the accused did not honour the said agreement and time was twice extended. It is after the lapse of one year that the complainant would allege the execution of Ext.P1 cheque on 14.8.2002 by the accused for Rs.2 lakhs. The stand of the revision petitioner has been one of total denial of any liability under the cheque in question. If so, the non-production of the alleged written agreement is fatal to the case of the complainant. The defence of the revision petitioner was that the complainant was a tailor in the tailoring shop run by the wife of the revision petitioner and that there was a quarrel between the complainant and revision petitioner's wife resulting in the complainant leaving the firm and at that time he must have left the establishment after stealing the cheque book of the revision petitioner's wife and the present complaint was filed misusing the cheque leaf. When the accused has disputed the act of drawing, executing and handing over the cheque, the burden was squarely on the complainant to prove these three ingredients for sustaining

the complaint. The accused had even filed an application for sending the disputed signature for comparison to the handwriting expert and that was rejected by the trial court. The courts below were rest content by themselves comparing the disputed signature with the admitted signature of the accused by invoking section 73 of the Evidence Act which should not be the sole basis for entering a conviction in view of ***State Vs. Pali Ram*** [AIR 1979 SC 14]. When the agreement allegedly executed by the accused in favour of the complainant and have been the best evidence, withholding of the said agreement is fatal to the complainant's case ***Krishnaji Vs. Mohammed Haji Latheef*** [AIR 1968 SC 1413]. The complainant having not discharged the initial burden on him was not entitled to secure the conviction in the light of the decisions reported in ***Johnson Scaria Vs. State of Kerala*** [2006 (4) KLT 290], ***Lekha Vs. Manickan*** [2006 (4) KLT 800] and ***Kamalammal Vs. Mohanan*** [2006 (3) KLT 972]. As against this, the accused had examined his wife as DW1 and another employee in the tailoring shop as DW2 to substantiate the defence. The conviction recorded by the courts below cannot, therefore, be sustained.

4. I am afraid that I cannot agree with the above submissions. Both the courts have concurrently believed PW1, the complainant, who has testified before court that Ext.P1 cheque was duly executed by the accused and handed over to him. If so, that amounts to his discharging the initial burden on him. The non-production of the anterior agreement said to have been executed by the accused in favour of the complainant cannot in any way militate against the complainant's case that Ext.P1 cheque was executed in consideration of the accused having borrowed Rs.2 lakhs. In contradistinction, the case of the accused that the cheque in question was misused by the complainant who might have stolen the same from the tailoring shop of the wife of the accused was disbelieved by both the courts below. It is pertinent in this connection to know that in Ext.D1 reply notice, the specific case of the accused was that the cheque book of his wife was seen stolen and he came to know of the same only after receipt of the statutory notice in this case. But at the stage of evidence DW1 would have it that what was stolen was only a cheque leaf. She also confess that she did not lodge any complaint to the police regarding the loss of the cheque nor had

she countermanded payment by addressing the drawee bank. Under these circumstances, the conviction recorded by the court below concurrently does not suffer from any irregularity, illegality or impropriety so as to warrant interference in the rarefied jurisdiction of this court. I, therefore, confirm the same.

5. The only other question which survives for consideration is the adequacy or otherwise of the sentence imposed on the appellant. It is admitted by both sides that during the pendency of this revision the revision petitioner has deposited a sum of Rs.65,000/-. What now remains towards his liability under Ext.P1 is a sum of Rs.1,35,000/-. The learned counsel for the revision petitioner prayed for leniency in the sentence in case the revision petitioner discharges his liability within three months. The learned counsel appearing for the complainant/respondent also reluctantly agreed that if the balance amount of Rs.1,35,000/- is paid within three months from today, he has no objection in this court showing leniency in the sentence imposed on the revision petitioner. Accordingly, in the place of the sentence imposed on the revision petitioner by the court below the following sentence is imposed:-

In case the revision petitioner deposits before the court below the balance amount of Rs.1,35,000/- within three months from today, he shall be liable only to undergo imprisonment till the rising of the court which shall be undergone by him within one month thereof. If, on the other hand, the revision petitioner fails to deposit the said amount within three months from today, the sentence imposed on the revision petitioner by the court below will stand revived.

This revision petition is disposed of as above.

(V. RAMKUMAR, JUDGE)

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